165-538

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Office Supreme Court, U. S.
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JAMES H. McKENNEY,
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Supreme Court of the United States.

Original No. 40.

EX PARTE WILLIAM O. LUSBY.

WILLIAM O. LUSBY,
Petitioner.

JEREMIAH M. WILSON,
HENRY E. DAVIS,
Attorneys for Petitioner.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

Original No. —.

EX PARTE WILLIAM O. LUSBY.

To the Honorable the
Supreme Court of the United States:

The petitioner, William O. Lusby, respectfully represents as follows:

1. He is a citizen of the United States and a resident of the District of Columbia, and is now unlawfully restrained of his liberty by the marshal of the United States for the District of Columbia, to wit, Albert A. Wilson.

2. The facts concerning the said unlawful detention of the petitioner and the claim of authority under and by virtue of which he is detained are as follows: Heretofore, to wit, on the 6th day of April, A. D. 1896, and the 15th day of April, A. D. 1896, respectively, in the supreme court of the District of Columbia, holding a criminal term, there were filed against the petitioner two certain indictments purporting to be based upon the act of the Congress of the United States, approved the 2d day of August, A. D. 1886, commonly known as the oleomargarine law, for alleged violation of the provisions of the said law, the first of the said indictments

alleging a violation by the petitioner of the sixth section of the said act, and the second of the said indictments alleging the carrying on by the petitioner in the District of Columbia of the business of a retail dealer in oleomargarine without having paid special tax therefor. Afterwards, to wit, on the 21st day of April, A. D. 1896, the petitioner demurred to each of the said indictments, alleging, among other things, as grounds of demurrer the unconstitutionality of the act of Congress aforesaid, but the said demurrers and each of them were thereafter by the said court overruled, and the petitioner was ordered to plead and did plead not guilty to the said indictments and each of them, and was thereupon tried and convicted upon the said indictments and each of them, and upon such conviction the petitioner was sentenced by the court under the first of the said indictments to imprisonment in the common jail of the District of Columbia for the period of three hours, to take effect from the date of his arrival at said jail, and to pay a fine of four hundred dollars and the costs of prosecution, amounting to $28.75, and in default of payment of said fine and costs to stand committed further until paid; and under the second of the said indictments to pay a fine of one hundred dollars and the costs of prosecution, amounting to $25, and in default of the payment of said fine and costs to stand committed until paid; and the petitioner was thereupon on, to wit, the 14th day of December, A. D. 1896, committed to the custody of the said marshal of the United States in and for the District of Columbia under the said judgments and sentences, and the said marshal took the petitioner into his custody and now confines him in such custody and deprives him of his liberty by virtue thereof.

3. The said confinement and imprisonment of the petitioner and the said deprivation of his liberty as aforesaid are unlawful and without authority and are made and now continue in violation of the Constitution and laws of the

United States for the following, among other, reasons: The act under which the said indictments and each of them was found is contrary to the Constitution of the United States, in this, among other things: That it is not within the power of the Congress of the United States, under the Constitution of the United States, to delegate to the Commissioner of Internal Revenue, or the Secretary of the Treasury of the United States, or any other person, authority or power to determine what acts shall be criminal, and the said act of Congress aforesaid does not sufficiently define or define at all what acts done or omitted to be done within the supposed purview of the said act shall constitute an offense or offenses against the United States.

Wherefore the petitioner prays that the writ of *habeas corpus* may issue from this Court directed to the said Albert A. Wilson, marshal as aforesaid, commanding him to produce the petitioner before this Court, together with the cause of his detention, and also, if need be, that a writ of *certiorari* be directed to the clerk of the said supreme court of the District of Columbia requiring him to bring into this Court a full, complete, and duly certified copy of the records and each of them of the entire proceedings against the petitioner in the premises, and that pending this petition and upon the hearing thereof this Court will by such order in the premises as may be deemed proper admit the petitioner to bail.

WILLIAM O. LUSBY,
Petitioner.

JEREMIAH M. WILSON,
HENRY E. DAVIS,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, *ss:*

Before me, a notary public in and for the District aforesaid, personally appeared William O. Lusby, who, being by me first duly sworn, deposes and says that he has read the

foregoing petition by him subscribed and knows the contents thereof, and that the facts in the said petition stated and set forth are true.

WILLIAM O. LUSBY.

Subscribed and sworn to before me this 14th day of December, A. D. 1896.

[SEAL.] MASON N. RICHARDSON,
Notary Public.

165-538.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 8, ORIGINAL.

EX PARTE: IN THE MATTER OF SAMUEL J. McCAULLY, PETITIONER.

RETURN TO RULE.

FILED DECEMBER 29, 1896.

foregoing petition by him subscribed and knows the contents thereof, and that the facts in the said petition stated and set forth are true.

WILLIAM O. LUSBY.

Subscribed and sworn to before me this 14th day of December, A. D. 1896.

[SEAL.] MASON N. RICHARDSON,
Notary Public.

165-538

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

NO. 8, ORIGINAL.

EX PARTE: IN THE MATTER OF SAMUEL J. McCAULLY, PETITIONER.

RETURN TO RULE.

FILED DECEMBER 29, 1896.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

NO. 8, ORIGINAL.

EX PARTE: IN THE MATTER OF SAMUEL J. McCAULLY, PETITIONER.

Return of Albert A. Wilson, marshal of the United States for the District of Columbia.

Now comes Albert A. Wilson, marshal of the United States for the District of Columbia, and for a return to the rule to show cause issued herein respectfully shows:

That, until the release of the aforesaid Samuel J. McCaully, as hereinafter stated, he held the body of the said Samuel J. McCaully in his custody, as alleged in the petition filed herein, to be conveyed to the United States jail of the District of Columbia, pursuant to the judgment and sentence of the supreme court of said District, mentioned in said petition.

That said marshal of the United States for the District of Columbia further shows that the aforesaid Samuel J. McCaully was released from custody on bail on the fourteenth day of December, 1896, in compliance with the order of this honorable court in the premises.

ALBERT A. WILSON,
U. S. Marshal.

Subscribed and sworn to before me this eighteenth day of December, A. D. 1896.

[SEAL.]

JOHN R. YOUNG,
Clerk Supreme Court District of Columbia.

(Indorsed:) Supreme Court, United States. Original, No. 8. Ex parte: In the matter of Samuel J. McCaully, petitioner. Return of Albert A. Wilson, United States marshal for the District of Columbia, to the rule to show cause issued herein.

165-538

SUPREME COURT OF THE UNITED STATES.

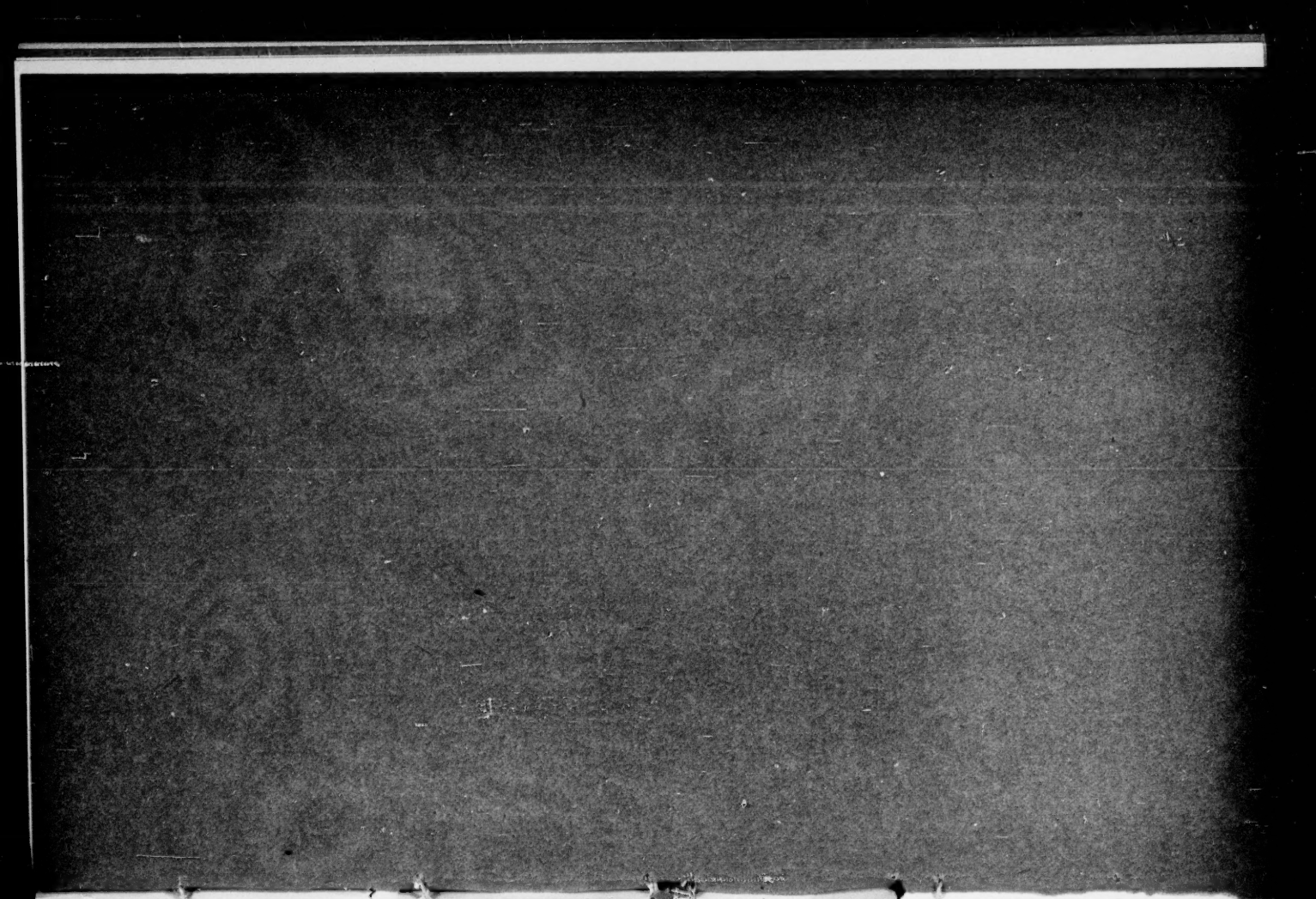
OCTOBER TERM, 1896.

NO. 10, ORIGINAL.

EX PARTE: IN THE MATTER OF WILLIAM O. LUSBY, PETITIONER.

RETURN TO RULE.

FILED DECEMBER 29, 1896.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

NO. 10, ORIGINAL.

EX PARTE: IN THE MATTER OF WILLIAM O. LUSBY, PETITIONER.

Return of Albert A. Wilson, marshal of the United States for the District of Columbia.

Now comes Albert A. Wilson, marshal of the United States for the District of Columbia, and for a return to the rule to show cause issued herein respectfully shows:

That, until the release of the aforesaid William O. Lusby, as hereinafter stated, he held the body of the said William O. Lusby in his custody, as alleged in the petition filed herein, to be conveyed to the United States jail of the District of Columbia, pursuant to the judgments and sentences of the supreme court of the said District, mentioned in said petition.

The said marshal of the United States for the District of Columbia further shows that the aforesaid William O. Lusby was released from custody on bail on the fourteenth day of December, 1896, in compliance with the order of this honorable court in the premises.

ALBERT A. WILSON,
U. S. Marshal.

Subscribed and sworn to before me this eighteenth day of December, A. D. 1896.

[SEAL.] JOHN R. YOUNG,
Clerk Supreme Court District of Columbia.

(Indorsed:) Supreme Court, United States. Original, No. 10. Ex parte: In the matter of William O. Lusby, petitioner. Return of Albert A. Wilson, United States marshal for the District of Columbia, to the rule to show cause issued herein.